



**Waga v Property Reality Company Investment Ltd; Kinyua (Interested Party) (Miscellaneous Application Arbitration E031 of 2021) [2025] KEHC 1996 (KLR) (Commercial and Tax) (13 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1996 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
MISCELLANEOUS APPLICATION ARBITRATION E031 OF 2021**

**PM MULWA, J**

**FEBRUARY 13, 2025**

**IN THE MATTER OF AN APPLICATION BY PAUL JOSEPH WAGA FOR  
THE RECOGNITION AND ENFORCEMENT OF ARBITRAL AWARD**

**AND**

**IN THE MATTER OF THE ARBITRATION ACT**

**BETWEEN**

**PAUL JOSEPH WAGA ..... DECREE HOLDER**

**AND**

**PROPERTY REALITY COMPANY INVESTMENT LTD . JUDGMENT DEBTOR**

**AND**

**JAMES KARIUKI KINYUA ..... INTERESTED PARTY**

**RULING**

1. The Applicant, James Kariuki Kinyua filed a Notice of Motion dated 16<sup>th</sup> September 2024, seeking to be enjoined as an interested party. He also sought to set aside, vary, rescind, or review court orders issued on 26<sup>th</sup> July 2023, 21<sup>st</sup> January 2024 and 22<sup>nd</sup> August 2024. These orders authorized the sale of the property known as Nakuru Municipality Block 23/196 to satisfy an Arbitration Award between the 1<sup>st</sup> and 2<sup>nd</sup> Respondents. The Applicant also seeks an order directing that execution of the award proceed solely against the 2<sup>nd</sup> Respondent, excluding his property, and that the Nakuru County Land Registrar reinstate the property's registration in his name. The Applicant further seeks that the 2<sup>nd</sup> Respondent bear the costs of the application.



2. The application is based on the grounds stated in the record and supported by an affidavit sworn by James Kariuki Kinyua on 16<sup>th</sup> September 2024. He asserts that he is the registered proprietor of the suit property, having purchased it from the 2<sup>nd</sup> Respondent on 26<sup>th</sup> May 2023 for Kshs. 12 million, with Family Bank financing Kshs. 7,150,000.00, leading to a charge on the title. The 2<sup>nd</sup> Respondent also contracted to sell an apartment (No. 5G, 5<sup>th</sup> floor) to be erected on the property to the 1<sup>st</sup> Respondent but breached the agreement, leading to arbitration.
3. The Applicant contends that the court orders of 26<sup>th</sup> July 2023, which allowed the public auction of the suit property, were issued due to material non-disclosure of his ownership. He argues that his property sale was not in contempt of the court orders, as it occurred earlier on 4<sup>th</sup> July 2023. He further claims that the court order of 25<sup>th</sup> January 2024, which cancelled his certificate of lease, significantly prejudiced him. He argues the arbitral award only required a refund of the purchase price to the 1<sup>st</sup> Respondent and did not award the suit property to them. His primary concern is that the execution of the arbitral award unfairly affects his property, and he fears that it may be auctioned unless the court grants the orders sought.
4. The 1<sup>st</sup> Respondent/Decree holder filed a Notice of Preliminary Objection, Grounds of Objection, and a Replying Affidavit all dated 27<sup>th</sup> September 2024. He argues that the Applicant has no locus standi to bring the application, as he was not a party to the arbitral proceedings. Additionally, the 1<sup>st</sup> Respondent asserts that the sale of the suit property to the Applicant was fraudulent, and aimed at obstructing enforcement of the court's decree.
5. The 2<sup>nd</sup> Respondent through its director Brian Gacari filed a Replying Affidavit sworn on 17<sup>th</sup> September 2024 which supports the Applicant's motion but disputes the issue of costs.

### **Analysis and determination**

6. The application was heard through written submissions. I have duly considered the pleadings, the affidavits and the submissions filed by the parties in support of their arguments. The central issues in this case is whether the Applicant, James Kariuki Kinyua, should be enjoined as an interested party and whether the court should set aside, vary or review its orders issued on 26<sup>th</sup> July 2023, 21<sup>st</sup> January 2024, and 22<sup>nd</sup> August 2024.

### **Whether the Applicant should be enjoined as an interested party to the suit?**

7. The question of whether an individual should be enjoined as an interested party is governed by Order 1, Rule 10 of the Civil Procedure Rules, which provides that a person may be added as a party if they have a direct interest in the matter and their rights may be affected by the outcome of the proceedings.
8. Order 1 rule 10(2) of the said rules provides that:

“The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.”
9. In the present case, the Applicant claims to be the bona fide purchaser of the suit property, which may be adversely affected by the arbitral award. However, the 1st Respondent's objection hinges on the fact



that the Applicant was not a party to the arbitration and, therefore, lacks locus standi to challenge the arbitral award or subsequent execution orders.

10. In *Joseph Njau Kingori v Robert Maina Chege & 3 Others* [2002] eKLR the court set out the guiding principles for a party to be enjoined as an interested party as follows:
  - i. The proposed interested party must be a necessary party and a proper party;
  - ii. In the case of a defendant there must be a relief flowing from that defendant to the plaintiff.
  - iii. The ultimate order or decree cannot be enforced without his presence in the matter.
  - iv. His presence is necessary to enable the Court to effectively and completely to adjudicate upon and settle all questions involved in the suit.
11. In this case, the intended party claims to be the registered owner of the suit property, having acquired it through a sale from the 2<sup>nd</sup> Respondent. He contends that the property is at risk of being sold in execution of the arbitral award. Conversely, the 1<sup>st</sup> Respondent asserts that the sale to the intended party by the 2<sup>nd</sup> Respondent was designed to circumvent the enforcement of the arbitral award. The 1<sup>st</sup> Respondent also elaborates on the challenges encountered at the land registry, specifically the missing green card, which was only procured after the intervention of the court by ordering the cancellation of the registration to the Applicant.
12. The issue subject to the arbitral award involved the 1<sup>st</sup> and 2<sup>nd</sup> Respondents. The intended party was not privy to the contract, and I hold that the intended party has no cause of action against the 1<sup>st</sup> Respondent. Any potential cause of action, if any, would lie against the 2<sup>nd</sup> Respondent. As such, I find that the intended Applicant is not a necessary party to the suit. The arbitral award can be enforced in the absence of the intended party.
13. However, the Applicant's position as a third-party purchaser does not automatically grant him the right to challenge the arbitral award unless there is a direct connection between his claim to the property and the execution of the award.
14. In my considered view, the Applicant's attempt to shield the property from execution by his purchase from the 2<sup>nd</sup> Respondent appears to be a deliberate effort to circumvent the enforcement of the arbitral award. The Land Registrar's cancellation of the Applicant's registration in the land registry, following a contempt application by the 1<sup>st</sup> Respondent, casts significant doubt on the legitimacy of the transaction.
15. In the case of *Anne Mumbi Hinga v Victoria Njoki Gathara Civil Appeal No. 8 of 2009*, the Court of Appeal held:

“No application of the Civil Procedure Rules would be regarded as appropriate if its effect would be to deny an award finality and speedy enforcement, both of which are major objectives of arbitration.”
16. In light of the foregoing, I am not persuaded that enjoining the interested party to the suit would serve the interests or objectives of the arbitration.



**Whether the Court should set aside, vary, or review its orders issued on 26th July 2023, 21st January 2024 and 22nd August 2024**

17. When considering whether to set aside court orders, the court must carefully evaluate the grounds upon which such an application is based. Setting aside a court order can significantly affect the rights of the parties involved, and the court must ensure that such a decision is justified.
18. Section 3A of the *Civil Procedure Act* allows the court to set aside or amend orders to prevent injustice and maintain fairness in the legal process. This power allows the court to correct errors or avoid any undue hardship that might result from enforcing an unjust order.
19. However, this discretion is not exercised lightly. The party seeking the court's intervention must provide clear and convincing reasons to justify setting aside or altering the orders. Only when there are substantial grounds to do so will the court consider modifying or rescinding its previous orders.
20. In this case, the Applicant is seeking to set aside various orders issued by the court. However, the court's role in enforcing arbitral awards is crucial. The court can recognize an arbitral award as a court judgment, allowing the winning party to use civil procedure mechanisms to compel the losing party to comply. All the orders in question were made in the process of enforcing the arbitral award, and the Applicant has not provided sufficient grounds to justify setting them aside.
21. Additionally, the Applicant has failed to demonstrate that the orders in question were fundamentally unjust or would cause irreparable harm to his rights. Simply attempting to shield property from the execution of the arbitral award does not, in itself, provide a valid legal reason to overturn the court's earlier orders. Therefore, I am not convinced that the court should set aside the orders issued on 26<sup>th</sup> July 2023, 21<sup>st</sup> January 2024, and 22<sup>nd</sup> August 2024.

**Disposition**

22. In light of the foregoing I find that the Notice of Motion dated 16th September 2024 is without merit and is hereby dismissed in its entirety. It is well-established that costs follow the event. Accordingly, I direct that the Applicant shall bear the costs of this application.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 13<sup>TH</sup> DAY OF FEBRUARY 2025.**

**P.M. MULWA**

**JUDGE**

In the presence of:

Ms. Mukuhi for DH/1<sup>st</sup> Respondent

Ms. King'ara for JD/2<sup>nd</sup> Respondent

Mr. Oira for Interested Party/Applicant

Court Assistant: Carlos

